IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.42 of 2005

Reserved on : October 29, 2007

Decided on : November 2, 2007

Sulinder Singh and another **…Appellants.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellants : Mr. N.K. Thakur, Advocate.

For the Respondent : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

Surjit Singh, Judge

Appellants are aggrieved by the judgment of the trial Court whereby they have been convicted of an offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985, and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/-, in default of payment to fine to undergo rigorous imprisonment for a further period of two years.

2. First, the allegations on which the appellants were tried and convicted may be noticed. On 7.7.2003 when a Police party, headed by PW-15 ASI Harbans Lal, was present at Gondpur, PW-12 Constable Upnesh Kumar met it and informed ASI Harbans Lal that the appellants had kept huge quantity of poppy straw concealed in their house in village Gondpur Bulla and if raid was conducted immediately

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Whether reporters of the local papers may be allowed to see the judgment?

the same could be recovered. The aforesaid information was reduced into writing, in the form of statement, under Section 154 of the Code of Criminal Procedure, for the formal registration of the case and also to meet the requirement of Section 42(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985. Thereafter, a raiding party was formed and on the search of the house of the appellants eight bags, seven containing 45 kgs. each and one containing 35 kgs. poppy husk, were recovered. Two samples, each weighing 250 grams, from each of the bags, were separated and sealed. The appellants were arrested. One sample from each of the eight bags was sent to the Chemical Examiner, who opined that the samples contained contents of poppy husk.

3. On the completion of the investigation and receipt of the report of the Chemical Examiner, appellants were sent up for trial. They were charged with the offence punishable under Section 15(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, for possessing commercial quantity of poppy straw. They pleaded not guilty to the charge and were, therefore, ordered to be tried. On conclusion of the trial, the Court found them guilty and convicted and sentenced, as aforesaid.

4. In another case, i.e., Criminal Appeal No.295 of 2004, titled as Rajiv Kumar alias Guglu versus State of H.P., we noticed that the report of the Chemical Examiner showed that two tests were conducted in respect of the sample of poppy straw to ascertain whether meconic acid and morphine were present in the sample stuff and on finding both the tests positive, opinion was given that the sample contained contents of poppy straw. We felt that the tests perhaps were not enough to reach the conclusion that the stuff was, in fact, poppy

straw. Therefore, we ordered that the Chemical Examiner be summoned and examined, as a Court witness. Pursuant to our orders, the Chemical Examiner appeared in that case. His statement was recorded, a copy whereof has been placed on the record of this case.

5. The Chemical Examiner stated that the two tests conducted by him were indicative that the straw was either of the plant of species of papaver somniferum-L or a plant of any other species of papaver from which opium or phenanthrene alkaloid can be extracted or a mixture of plants of the species of papaver somniferum-L and any other plant of papaver species yielding opium or any phenanthrene alkaloid. He admitted that the tests conducted by him did not specifically indicate whether the straw was of a plant of species of papaver somniferum-L or a plant of any other species of papaver from which opium or any other phenanthrene alkaloid can be extracted and which the Central Government may have notified for the purpose of Clause (b) of Section 2(xvii) of the Narcotic Drugs and Psychotropic Substances Act, 1985. On further questioning, he admitted that the straw could have been of a plant of papaver species yielding opium or any other phenanthrene alkaloid and which(plant) may not have been even notified by the Central Government for the purpose of Clause (b) of Section 2(xvii) of the Act. He stated that there was no equipment available in his laboratory for conducting any botanical tests to determine the species of a plant by examining the straw. He also admitted that there was no expert available in his laboratory to give definite opinion about the species of the plant by analyzing/testing the straw supplied to him.

6. In the case on hand also, the report of the Chemical Examiner is similar to the report in the aforesaid Criminal Appeal

No.295 of 2004, titled Rajiv Kumar alias Guglu versus State of H.P. The Chemical Examiner conducted two tests for meconic acid and morphine and on finding both the tests positive gave the opinion that the samples contained contents of poppy husk.

7. We have heard the present matter alongwith the aforesaid Criminal Appeal No.295 of 2004.

8. Referring to the report Ex. PW-15/C and the statement of the Chemical Examiner recorded by us, the substance whereof has been noticed hereinabove, the learned counsel for the appellants urged that there was no evidence on record that the substance that was allegedly recovered from the house of the appellants was poppy straw, within the meaning of Section 2(xviii) of the Narcotic Drugs and Psychotropic Substances Act, 1985. He submitted that poppy straw means all parts (except seeds) of the plant of the species of papaver somniferum-L or the plant of any other species of papaver from which opium or any other phenanthrene alkaloid can be extracted and which (the later mentioned plant) the Central Government might have notified to be opium poppy.

9. For appreciation of the argument of the learned counsel, definitions of “poppy straw” and “opium poppy” given in the Narcotic Drugs and Psychotropic Substances Act, 1985, need to be noticed. The same are reproduced here for ready reference.

> “Section 2(xviii), “poppy straw” means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom.
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> Section 2(xvii), “opium poppy” means__
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> (a) the plant of the species Papaver somniferum L.: and

(b) the plant of any other species of Papaver from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act."

10. From the definition of poppy straw, as reproduced hereinabove, it is clear that to understand the meaning of poppy straw, it is essential to refer to the meaning of opium poppy. Poppy straw, when read alongwith the definition of opium poppy, means (a) all parts (except seeds) of the plant of the species of papaver somniferum-L and all parts (except seeds) of the plant of any other species of papaver from which opium or any other phenanthrene alkaloid can be extracted and which the Central Government may by notification in the official gazette declare to be opium poppy for the purposes of Narcotic Drugs and Psychotropic Substances Act, 1985.

11. In the present case, as is clear from the aforesaid statement of the Chemical Examiner, recorded by us, the two tests conducted by him to ascertain whether the stuff contained meconic acid and morphine do not indicate that the stuff examined consisted of the parts of either the plant of the species of papaver somniferum-L or a plant of any other species of papaver from which opium or any other phenanthrene alkaloid can be extracted and which the Central Government may have notified to be the opium poppy for the purposes of the Narcotic Drugs and Psychotropic Substances Act, 1985. If it is so, the report of the Chemical Examiner, Ex. PW-13/F, that the stuff contains contents of poppy husk, which term is similar to the term "poppy straw", cannot be used as enough evidence to hold that the stuff recovered from the appellant, the sample of which was analyzed by the Chemical Examiner, was poppy straw.

12. In this view of the matter, we derive strength from a judgment of the Hon'ble Supreme Court in ***Amarsingh Ramjibhai Barot versus State of Gujarat, (2005) 7 Supreme Court Cases 550.*** Facts of that case were that some black substance, looking like opium, was recovered from the accused. A sample of the substance was sent to the Chemical Examiner, who reported that the sample was "opium as described in the Narcotic Drugs and Psychotropic Substances Act, 1985, containing 2.8 per cent anhydride morphine and also pieces of poppy flowers (*posedoda*)". The Hon'ble Supreme Court noticed the definition of opium as given in Section 2(xv) of the Narcotic Drugs and Psychotropic Substances Act, 1985, according to which, "opium" means (a) the coagulated juice of opium poppy; and (b) any mixture with or without any neutral material of the coagulated juice of the opium poppy, but does not include any preparation containing not more than 0.2 per cent of morphine. The Hon'ble Supreme Court held that there did not appear any acceptable evidence that the black substance found with the appellant was "coagulated juice of the opium poppy" and "any mixture, with or without any neutral material of the coagulated juice of the opium poppy" and that the opinion given by the FSL that it was opium, as described in the Narcotic Drugs and Psychotropic Substances Act, 1985, was not binding on the Court.

13. In view of what has been stated hereinabove, we hold that the substance allegedly recovered from the appellants has not been proved to be poppy straw, within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985, and, therefore, they are not liable to conviction and punishment for the offence described in and made punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Consequently, the appeal is

accepted, judgment of the trial Court convicting and sentencing the appellants for offence under Section 15(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, is set aside and the appellants are acquitted. They being in jail, serving out the sentence awarded by the trial Court, are ordered to be set at liberty forthwith, in case their detention is not required in any other case.

(Surjit Singh), J

November 2, 2007(sd) **(Surinder Singh), J**